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MINISTRY OF LAW

NOTIFICATION

New Delhi, the 8th April 1964

S.O. 1311.—The following Order made by the President is published for general information:—

ORDER

Whereas a question was raised in the House of the People as to whether Shri Priya Gupta, a member of that House, has become subject to a disqualification for being a member of that House by reason of his holding an office of profit under the Government of India, to wit, the office of Electrical Foreman in the North-Eastern Railway;

And whereas the House of the People directed that the said question shall be referred for the decision of the President of India by the Minister of Law under clause (1) of article 103 of the Constitution of India;

And whereas the Minister of Law, in pursuance of the said direction of the House of the People, referred the said question to the President of India;

And whereas the said question was also raised by Shri Bhola Nath Biswas, son of Anandilal Biswas, of Kadwa, District Purnea, Bihar, in a petition addressed to the President of India;

And whereas the opinion of the Election Commission has been obtained on the said question, a copy of which opinion is annexed hereto;

Now, therefore, I, Sarvapalli Radhakrishnan, President of India, in exercise of the powers conferred upon me under article 103 of the Constitution of India, do hereby decide, in accordance with the opinion of the Election Commission, that the said Shri Priya Gupta has not, at any time after his election to the House of the People, become subject to a disqualification for being a member of that House by reason of his holding any office of profit under the Government of India.

S. RADHAKRISHNAN,
President of India.

Rashtrapati Bhavan,
New Delhi.
The 27th March, 1964.

ANNEXURE

ELECTION COMMISSION, INDIA

Opinion

The question whether Shri Priya Gupta, a Member of the Lok Sabha, has at any time become disqualified for being such Member by reason of his holding an office of profit under the Government of India, namely, the office of Electrical Foreman in the North-Eastern Railway, has been referred by the President of India to the Election Commission for its opinion under clause (2) of article 103 of the Constitution.

This question was raised on the 20th December, 1963 in the Lok Sabha by Shri P. G. Sen, another Member of that House, calling the attention of the Minister of Law to the situation arising out of the judgment of the Supreme Court delivered on the 5th September, 1963 in Civil Appeal No. 713 of 1962—Shri Priya Gupta *versus* The General Manager, North-Eastern Railway. After a discussion, the House decided that the Minister should refer the question for the decision of the President and this was done by the Minister in a letter dated the 7th February 1964.

At about the same time the question was also raised before the President by one Shri Bholanath Biswas in a petition dated the 21st December, 1963.

The circumstances in which this question has arisen are as follows. Shri Gupta entered railway service in 1944 as an assistant electrical foreman in the former Bengal and Assam Railway, was appointed in 1949 as an electrical foreman in the former Assam Railway and continued to serve in the same capacity in the North-Eastern Railway until the 8th August, 1956. On that day he was holding the office of electrical foreman in the North-Eastern Railway's power house at Pandu in Assam. His services were terminated by the General Manager of the Railway by giving him one month's notice as provided in the relevant service rules, namely, rules 148(3) and 149(3) of the Indian Railway Establishment Code.

Feeling aggrieved by this order, Shri Gupta, on the 22nd November, 1956, filed an application under article 226 of the Constitution in the Allahabad High Court praying for a writ quashing the General Manager's notice terminating his services and directing the General Manager to treat him as being in service on the same post. This application was heard by a single Judge of the Allahabad High Court who dismissed it by a judgment dated the 11th September, 1958. Shri Gupta's appeal to a division bench of the same High Court was dismissed on the 15th December, 1959, and his further application for leave to appeal to the Supreme Court also was rejected by the High Court on the 23rd September, 1960. Thereafter he applied on the 21st November, 1960, to the Supreme Court itself for special leave to appeal against the judgment of the Allahabad High Court. The Supreme Court, after hearing Shri Gupta's application along with two other similar applications, granted leave to all three applicants on the 13th January, 1961. Shri Gupta's appeal was registered as Civil Appeal No. 713 of 1962.

Meanwhile, on the 2nd March, 1962, Shri Gupta was declared to have been duly elected at the last general election to the Lok Sabha from the Katihar parliamentary constituency in Bihar. He took his seat in the House in due course and there was no election petition challenging his election in any way. He, however, pursued his appeal then pending before the Supreme Court.

Shri Gupta's appeal was heard, along with six other appeals which raised a common question of law, by a bench of seven Judges of the Supreme Court in October, 1963 and was finally decided on the 5th December, 1963. The operative part of the formal order drawn up pursuant to the judgment of the Supreme Court is in the following terms:—

"THIS COURT DOTH DECLARE that Rules 148(3) and 149(3) of the Indian Railway Establishment Code Vol. I are invalid as the said rules contravene the Constitutional safeguard provided by Article 311(2) of the Constitution of India.

AND ACCORDINGLY DOTH in allowing the appeal above mentioned ORDER THAT the judgment and Order dated the 11th September 1958 of the Allahabad High Court in Civil Miscellaneous Writ No. 3962 of 1956, confirmed on appeal by the judgment and Order dated the 15th December 1959 of the said High Court in Special Appeal No. 502 of 1958, be and are hereby set aside.

And in place thereof AN ORDER allowing the aforesaid writ Petition filed by the Appellant herein in the Allahabad High Court being Civil Miscellaneous Writ

No. 3962 of 1956 and quashing the Order No. E/(ss)-19-208/1 dated the 8th August 1956 terminating the services of the Appellant herein made by the General Manager, N.E. Railways, Gorakhpur; AND THE DIRECTION that the Appellant herein be deemed to be in continuous service of the Railway be and the same is hereby substituted." To summarise the relevant facts—

(i) Shri Gupta was for a few years in railway service and, until the 8th August, 1956, was holding an office of profit under the Government of India, namely, that of an electrical foreman;

(ii) on that date, his service was terminated by the appropriate authority under certain rules then considered to be legal and valid;

(iii) after a long period of 7 years and 4 months spent in litigation, Shri Gupta obtained from the Supreme Court a declaration that the rules were invalid, an order quashing the General Manager's order terminating his service and a direction that he "be deemed to be in continuous service of the Railway";

(iv) meanwhile, more than five and a half years after he had ceased to hold the office of electrical foreman and one and a half years before the final adjudication of the matter by the Supreme Court, he was duly elected to the Lok Sabha at a general election.

On receipt of the reference from the President, the Election Commission gave notice thereof to Shri Gupta, and also to Shri Bholanath Biswas who had sent a petition to the President raising the question and to the Secretary of the Law Ministry. On the date of the hearing given by the Commission Shri Gupta was present with his legal advisers and put in a written statement supported by a personal affidavit in reply to the reference. Shri Biswas also was present at the hearing and subsequently put in a written statement setting out his view of the matter.

It is necessary to refer to two or three points which have been clarified by Shri Gupta in his affidavit. It appears from the Report of the Lok Sabha proceedings of the 20th December, 1963 that the Minister of Law gathered from Shri Gupta the impression "that the Allahabad High Court has amended his prayers in the petition for declaring him to be still in service so as to treat him to be so only up to that date, which is prior to his standing for election to the Lok Sabha" but the correctness of the statement had not yet been verified. Shri Gupta has made it clear before the Commission that the reference to the Allahabad High Court was under a misapprehension and what he had in mind was the prayer made in the statement of case lodged on his behalf before the Supreme Court for the purposes of his appeal. This reads as follows:—

"That the High Court should have held that the General Manager has no power to terminate the services of the Appellant by his order dated 8th August, 1956 and that the said order terminating the service of the Appellant was bad in law and should have issued appropriate writ, order or direction quashing the said order of the 8th August, 1956 and directing that the Appellant be deemed to have continued in service until the date of Judgement of the Allahabad High Court."

This statement was filed on the 6th March, 1963, i.e. after his election to the Lok Sabha. The fact remains, however that despite this limited prayer in the statement of case the order of the Supreme Court directs that the appellant be deemed to be in continuous service of the Railway without any limiting date.

Another fact which has been brought to notice by Shri Gupta in his affidavit is that the North Eastern Railway was bifurcated in or about January, 1958, into the North Eastern Railway with headquarters at Gorakhpur and the North East Frontier Railway with headquarters at Pandu, under two different General Managers. The Office of the Electrical Foreman at Pandu, which Shri Gupta was holding before the 8th August, 1956, fell within the jurisdiction of the North-East Frontier Railway and under the authority of the General Manager of that Railway at Pandu and the General Manager of the North-Eastern Railway at Gorakhpur ceased to have any jurisdiction over that office. The point which is apparently sought to be made by Shri Gupta is that since the former General Manager was not a party in those proceedings before the Supreme Court, its order regarding Shri Gupta would not automatically be binding on him, and the General Manager of the North-Eastern Railway could not automatically reinstate him in the office of Electrical Foreman at Pandu since that office was no longer under his control.

Shri Gupta has further stated in his affidavit that he has not held any office of profit under the Government since his election to the Lok Sabha, that immediately after the grant of the special leave by the Supreme Court on the 13th January, 1961, he had in a communication to the General Manager, North East Frontier Railway,

informed him that even if he, Shri Gupta, succeeded in his appeal, he would not rejoin the post of Electrical Foreman at Pandu or anywhere else in the Railway, and that he does not intend to join this post or office.

It is settled by the decision of the Supreme Court in Election Commission *versus* Saka Venkata Rao (2ELR499) that articles 190(3) and 192 are applicable only to disqualifications to which a member of a State Legislature becomes subject after he is elected as such and that neither the Governor nor the Election Commission has jurisdiction to inquire into a member's disqualification which arose long before his election. Since the corresponding provisions of the Constitution governing members of Parliament, *viz.* articles 101(3) and 103, are identically worded, it is clear that the present inquiry must be confined to the question whether Shri Gupta has, at any time after his election to Parliament, become subject to the disqualification mentioned in article 102(1)(a). If, for instance, the legal position is found to be that Shri Gupta, at the time of his election in March, 1962, was or must be deemed to be holding an office of profit under the Government of India, there can be no question, according to the decision of the Supreme Court cited above, of his becoming subject to that disqualification after his election and consequently no inquiry can be made, nor decision given, under article 103 in regard to that pre-election disqualification.

What exactly is the consequence in law of the Supreme Court's final order in Shri Gupta's appeal? The material part of this order has been set out above from which it will be seen that the Supreme Court has (a) quashed the order made on the 8th August, 1956, by the General Manager of the North-Eastern Railway terminating Shri Gupta's services and (b) directed that Shri Gupta be deemed to be in continuous service of the Railway. This is exactly as he had prayed for in his original writ petition to the Allahabad High Court and also in his petition for special leave to appeal to the Supreme Court. Although in his statement of case presented before the Supreme Court at a later stage, he had limited his prayer to a direction that he be deemed to have continued in service until the date of judgment of the Allahabad High Court, the order actually made by the Supreme Court does not specify any terminal date. Shri Gupta must therefore be deemed to be in continuous service of the railway from the 8th August, 1956, onwards, and further, such service could only be on the post which he was holding on that day, *viz.* that of electrical foreman at Pandu. It is impossible to dissociate service under the Government from a particular post or office in which the service is to be rendered. Shri Gupta himself, as already pointed out, had asked in his writ petition and appeals for a direction to the opposite party to treat him as being in service on the post from which he was illegally ousted.

Shri Bhola Nath Biswas who had raised the question before the President urges that Shri Gupta was not subject to a disqualification at the time of his election and that it was only after the judgment of the Supreme Court allowing his prayer in the writ petition that he became disqualified for being a member of Parliament. It is no doubt true that but for the order of the Supreme Court on Shri Gupta's appeal the question of his disqualification would not have arisen, but the retroactive effect of that order should not be overlooked in considering the question whether he was subject to the disqualification even before, and at the time of, his election. The Supreme Court's order is not to the effect that Shri Gupta should be deemed to be in service on and from the date of the order, but that he should be deemed to be in *continuous service*, counting from the date of the General Manager's illegal order purporting to terminate it. The disability accruing from this continuous service under the Government having been declared to have existed all along the principle laid down in Saka Venkata Rao's case must be regarded as applicable to the present case. It has to be borne in mind that, apart from this declaration nothing else has happened from which it can be said that Shri Gupta began to hold an office of profit after his election and thereby became subject to a disqualification.

The Election Commission accordingly tenders the opinion that Shri Priya Gupta has not, at any time after his election to the Lok Sabha, become subject to a disqualification for being a member of Parliament by reason of his holding any office of profit under the Government of India.

Sd./- K. V. K. SUNDARAM,
Chief Election Commissioner,
19-3-1964.

[No. F. 8(31)/63-Elec.]
B. N. LOKUR, Secy.